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## DMS - OPEN NEW DOCKET WORKSHEET

AGENCY: U.S. DOT/PHMSA

Category: Non Rulemaking

Subcategory: Enforcement

Docket Subject: In the Matter of

Poxide International, Inc

Docket Title: In the Matter of

Poxide International, Inc

Action Office: PHC-10

These fields are optional:

Old Docket Number or other Reference Number:

\_\_\_\_\_

RIN #: \_\_\_\_\_

Statutory Citation:

Abstract:

BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

IN THE MATTER OF:

Roxide International, Inc.,

(Respondent),

PHMSA Case No. 08-0169-SE-SW

PHMSA-2009-0129

**COMPROMISE ORDER**

By this Order I find that Roxide International, Inc. (Respondent) committed one violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. Accordingly, I assess Respondent a \$2,250 civil penalty for these violations.

**I. Summary**

Respondent: Roxide International, Inc.  
371 North Avenue  
New Rochelle, NY 10802  
Attn: Jim Cowen, President

No. of Violations: 1

Maximum Possible Civil Penalty: \$50,000

Total Payment Due: \$2,250

**II. Finding**


This matter comes before me after Respondent and the Pipeline and Hazardous Materials Safety Administration (PHMSA) agreed to a disposition of this civil enforcement action. I have reviewed the Compromise Agreement (Agreement) and I find the terms as outlined therein are in the best interest of justice. I find Respondent

committed the violation as described in the Agreement, which is attached as Addendum A to this Order, and I impose a civil penalty of **\$2,250**. Respondent must pay the civil penalty in accordance with the instructions contained in addendum B to this Order.

The attached Agreement, in its entirety, is incorporated into this Order. All of the terms and conditions of the Agreement shall be given the full force and effect of an Order issued pursuant to the Federal hazardous materials transportation law, 49 U.S.C. § 5101, et seq., or the Hazardous Materials Regulations, 49 C.F.R. Parts 171 – 180.

Dated: 4/29/09

So Ordered,

A handwritten signature in black ink, appearing to read "Sherri Pappas", written over a horizontal line.

Sherri Pappas

Acting Chief Counsel

Pipeline and Hazardous Materials Safety Administration

*fa*

## CERTIFICATE OF SERVICES

This is to certify that on the \_\_\_\_\_ day of APR 29 2009, the undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Original Order with  
Copy of Agreement  
Certified Mail Return Receipt

Mr. Shawn Daniels, PHMSA Investigator  
Office of Hazardous Materials Enforcement  
Southwest Region  
8701 S. Gessner Rd.  
Suite 1110  
Houston, TX 77074

One Copy (without enclosures)  
Via Electronic Mail

Ms. Dollie DeWalt, PHMSA Investigator  
Office of Hazardous Materials Enforcement  
Southwest Region  
8701 S. Gessner Rd.  
Suite 1110  
Houston, TX 77074

One Copy (without enclosures)  
Via Electronic Mail

Mr. Billy Hines, Region Chief  
Hazardous Materials Enforcement Office  
Southwest Region  
8701 S. Gessner Rd.  
Suite 1110  
Houston, TX 77074

One Copy (without enclosures)  
Via Electronic Mail

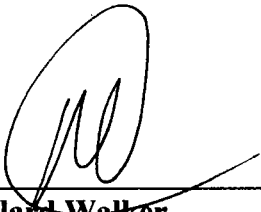
Amelia Samaras, Attorney  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Ave., S.E.  
East Building, E26 PHC  
Washington, DC 20590-0001

One Copy  
Personal Delivery

U.S. DOT Dockets  
U.S. Department of Transportation  
1200 New Jersey Ave., S.E.  
East Building  
Washington, D.C. 20590

One Copy  
Personal Delivery

APR 29 2009

  
\_\_\_\_\_  
Willard Walker

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

**IN THE MATTER OF:**

**Roxide International, Inc.,  
  
(Respondent)**

PHMSA Case No. 08-0169-SE-SW

**COMPROMISE AGREEMENT**

**I. Parties**

The Parties to this Compromise Agreement (Agreement) are:

Roxide International, Inc. ("Respondent"), a formulator, distributor, and shipper of a product containing explosive materials, located at 371 North Avenue New Rochelle, NY 10802

and

The Pipeline and Hazardous Materials Safety Administration ("PHMSA"), a modal Administration of the United States Department of Transportation.

**II. Authority/Jurisdiction**

A. The Parties enter into this agreement under authority of 49 U.S.C. § 5123(e) and 49 C.F.R. § 107.327(a)(1).

B. For the Purposes of this Agreement, Respondent acknowledges:

(1) As a person who transports hazardous materials, Respondent is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the jurisdiction of (a) the Secretary of Transportation, (b) the PHMSA's Associate Administrator for Hazardous Materials Safety, and (c) PHMSA's Office of Chief Counsel (49 U.S.C. § 5103(b) and 49 C.F.R. § 107.301);

(2) PHMSA has sufficient proof to show, by a preponderance of the evidence, Respondent's violation of the Federal regulations listed in Section V below; and

- (3) Respondent received proper notice of PHMSA's actions in this proceeding.

### III. Background

A. On August 21, 2008 an investigator from PHMSA's Office of Hazardous Materials Enforcement (OHME) observed a shipping container containing fiberboard boxes of Respondent's product, "Revenge Rodent Smoke Bombs," which contain explosive materials. This investigation was conducted pursuant to 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. PHMSA's investigator contacted Respondent to ask whether it had received approval to ship the explosive, and Respondent stated that it had not. PHMSA's inspector reported one alleged violation of the HMR. The investigator forwarded Respondent an "exit briefing," which explained the alleged violation and the required corrective action.

B. Upon completion of the compliance investigation, the inspector submitted a report to the chief of OHME's Southwest Region, who reviewed the report for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matter to PHMSA's Office of Chief Counsel thereby recommending the initiation of a civil penalty action against Respondent pursuant to 49 C.F.R. § 107.311.

C. Based on a preliminary assessment of the apparent nature, circumstances, extent, and gravity of the probable violation, as set forth in the inspector's report, on March 13, 2009, an attorney from the PHMSA's Office of Chief Counsel issued a Notice of Probable Violation (Notice) alleging one violation of the HMR and proposing a \$10,000 civil penalty.

### IV. Basis of Agreement

A. Reply to Notice. On March 19, 2009, Respondent submitted a timely reply to the Notice. In its reply, Respondent stated its inability to pay the full proposed civil penalty and submitted the "Classification of Explosives," which provided approval to ship the material in interstate commerce.

B. Corrective Action. In its March 19, 2009 letter, Respondent submitted evidence of corrective action it had taken. The following is a summary of all of Respondent's corrective action.

Violation Number	Respondent's Corrective action
1	Respondent submitted a copy of the "Classification of Explosives" (i.e., transportation approval) it received from PHMSA on December 12, 2008.

C. Finances. Respondent requested mitigation based on finances and submitted its three prior corporate federal tax returns for PHMSA's consideration. After analyzing the

financial documents using the ABEL Ability to Pay Analysis, PHMSA determined that Respondent does qualify for mitigation based on its poor financial condition.

D. Informal Conference. On April 1, 2009, the Office of Chief Counsel and Respondent (parties) held an informal conference. Respondent clarified/further explained its financial condition and discussed its connection to the Notice issued to Sin Son Chemical Company.

E. Small Business Size. Evidence in the record also substantiates that Respondent is a small business.

#### V. Violation and Civil Penalty

In a subsequent Order, the Chief Counsel will find that Respondent committed the following violation and will assess the following civil penalty:

Viol. No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Respondent imported and offered an explosive, 1.4S for transportation in commerce within the United States without obtaining an explosive approval from the United States Competent Authority, in violation of 49 CFR, §§171.2(a), (b), &(e); 171.23(b)(4); 173.51(a); and 173.56(b).	\$10,000	\$2,250
TOTAL	-----	\$10,000	\$2,250

#### VI. Factors Considered in Determining the Civil Penalty

In determining the amount of a civil penalty, PHMSA considered the following statutory criteria (49 U.S.C. § 5123(c)):

- (1) The nature, circumstances, extent, and gravity of the violation;
- (2) The degree of culpability and history of prior violations;
- (3) Respondent's size;
- (4) Respondent's corrective action;
- (5) Respondent's ability to pay the penalty and its ability to continue to do business; and
- (6) Other matters as justice may require.

Documentation of Respondent's corrective action for this violation and the fact that Respondent is a small business, justify assessing a civil penalty of \$2,250. Respondent may pay the civil penalty in six (6) payments of \$375 each.

#### VII. Terms and Conditions

Respondent agrees to pay the sum of \$2,250, as full satisfaction of civil penalty proposed in the Notice.

(1) Respondent must pay \$375 within thirty days from the date of the Order, which the Chief Counsel will issue after Respondent signs and returns this agreement.

(2) Respondent must pay an additional \$375 each thirty days after making its first payment and until Respondent has paid the entire \$2,250 civil penalty.

B. By entering into this agreement, Respondent waives any right:

(1) to present further written or oral explanations, information, and arguments in this matter;

(2) to Administrative appeal; and

(3) to seek judicial review or otherwise contest or challenge the validity of this Agreement or the Notice associated with this case.

C. This Agreement resolves only the violation noted in PHMSA Case No. 08-0169-SE-SW as referenced in Section V of this agreement and in the Notice. In the event Respondent commits any future violations of the Federal hazardous material transportation law, 49 U.S.C. § 5101 *et seq.*, the HMR, or any exemption, or order issued thereunder this violation shall constitute a prior violation under 49 U.S.C. § 5123.

D. After Respondent signs and returns this Agreement, PHMSA's representative will present the Agreement to the Chief Counsel requesting that the Chief Counsel adopt the terms of this Agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of this Agreement constitute an offer of compromise until accepted by the Chief Counsel.

E. After issuance of the Compromise Order, Respondent must pay the civil penalty in accordance with the terms of this Agreement. Upon receipt of Respondent's final payment, the Chief Counsel will close this case with prejudice to the Respondent (49 C.F.R. § 107.327(a)(1)(ii)).

#### **VIII. Miscellaneous Provisions**

A. By signing this Agreement, Respondent or its representative warrants to have read the agreement and understood its terms and conditions.

B. The individuals signing on behalf of the Respondent and PHMSA represent that they are authorized to sign and have authority to enter into this Agreement.

C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of the offer of compromise contained within

this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. § 107.317(d).

D. Respondent must return the signed Agreement to:

Amelia Samaras, Attorney  
United States Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
1200 New Jersey Ave., SE, Rm. E26  
Washington, D.C. 20590-0001

Or

amelia.samaras@dot.gov

**Respondent**

Federal Tax ID #: 13-1886363<sup>1</sup>

By: [Signature]  
Name, Title

Date: 4/24/09

**Pipeline and Hazardous Materials Safety Administration**

By: [Signature]  
Amelia Samaras, Attorney

Date: 4/28/09

<sup>1</sup> The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(c)(3). PHMSA will use this number for purposes of collecting and reporting on any delinquent amounts arising out of this agreement.

### ***Payment Information***

Respondent must pay a total civil penalty of \$2,250 in accordance with the following:

#### **Due date**

Respondent must pay the first \$375 of the payment plan within 30 days of the date of this Order. Respondent must pay an additional \$375 each 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first installment is due.

#### **Payment Method**

Respondent must pay the civil penalty by one of the following: (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet.

(1) **Wire Transfer.**

Detailed instructions for sending a wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury are contained in the enclosure to this Order. Please direct questions concerning wire transfers to:

Financial Operations Division  
Attn: Linda Lavalley  
Federal Aviation Administration  
Mike Monroney Aeronautical Center  
AMZ-341  
P.O. Box 25082  
Oklahoma City, OK 73125  
Telephone (405) 954-8893.

(2) **Check or Money Order.**

Make check or money order payable to "U.S. Department of Transportation" (include the Ref. No. of this case on the check or money order) and send to:

Chief, Financial Operations Division  
Attn: Linda Lavalley  
Federal Aviation Administration  
Mike Monroney Aeronautical Center

AMZ-341  
P.O. Box 25082  
Oklahoma City, OK 73125.

(3) Credit Card.

To pay electronically using a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/paygov/>

Interest and Administrative Charges

If Respondent pays the civil penalty by the due date, no interest will be charged. If Respondent does not pay by that date, the FAA's Financial Operations Division will start collection activities and may assess interest, a late-payment penalty, and administrative charges under 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23.

The rate of interest is determined under the above authorities. Interest accrues from the date of this Order. A late-payment penalty of six percent (6%) per year applies to any portion of the debt that is more than 90 days past due. The late-payment penalty is calculated from the date Respondent receives the Order.

Treasury Department Collection

FAA's Financial Operations Division may also refer this debt and associated charges to the U.S. Department of Treasury for collection. The Department of the Treasury may offset these amounts against any payment due Respondent (31 C.F.R. § 901.3).

Under the Debt Collection Act (see 31 U.S.C. § 3716(a)), a debtor has certain procedural rights prior to an offset. You, as the debtor, have the right to be notified of: (1) the nature and amount of the debt; (2) the agency's intention to collect the debt by offset; (3) the right to inspect and copy the agency records pertaining to the debt; (4) the right to request a review within the agency of the indebtedness and (5) the right to enter into a written agreement with the agency to repay the debt. This Order constitutes written notification of these procedural rights.

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION,  
U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ARB NO.</u> (provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or sending bank)
9. <u>BENEFICIAL (BNF)- AGENCY LOCATION CODE</u> BNF=/AC-69140001	10. <u>REASONS FOR PAYMENT</u> <i>Example: PHMSA Payment for Case #/Ticket</i>

**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation

**Block #1** - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

**Block #5** - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE:**  
**\$10,000.00**

**Block #7** - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, which must be used for all wire transfer to the Treasury Department.

**Block #9** - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69140001"  
Ensure the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation

**Block #10** - REASON FOR PAYMENT – "AC-Payment for PHMSA Case#" To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

**Note:** - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer, the General Accounting Division at (405) 954-8893.